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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8914 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? 1 - yes

JJJ

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whe2her it is to be circulated to the Civil Judge?  
1 to 5 NO

RAMESH V PATEL

Versus

G E B

Appearance:

MR CN TRIVEDI for Petitioner

Mr Tushar Mehta for Respondent No. 1

MR RD DAVE for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/08/96

ORAL JUDGEMENT

The petitioner purchased the assets viz. land, building and machinery held by M/s. Amrit Industries, 3218, GIDC. Chhatral, Phase III, District Mehsana, in a sale by auction arranged by Gujarat State Financial

Corporation to recover the outstanding dues of Rs.2,01,111/-, under the provisions of section 29 of the State Financial Corporations Act, 1951. After completing all the necessary formalities, the possession of the land, building and machinery etc. of M/s. Amrit Industries was handed over to the petitioner by the respondent-Corporation on 22.7.1995. The petitioner found that there was no electric supply since the same was cut off by the Gujarat Electricity Board and in absence of the power supply, it was not possible to carry on his work. He, therefore, approached the respondent No.2, Dy. Engineer, GEB, Kalol, Division II. His request was turned down on the plea that the electric bill in the sum of Rs.64,000/- was due against M/s.Amrit industries and the power could be restored only on payment of the said due.

2. Mr C N Trivedi, learned Advocate for the petitioner, relying on a decision of the Apex Court in the case of Isha Marbles v. Bihar Electricity Board. reported in JT 1995 (2) SCC 625, has contended that the auction purchaser would not be liable to meet a liability of the previous consumer with respect to the electricity bill. In view of the decision of the Apex Court, this Court, on 18.10.1995 while issuing notice for admission, directed the respondent No.1 to restore the electric supply if no amount is due except the bill as shown at Annexure 'A' i.e. the bill pertaining to the previous consumer -owner. The respondent No.1 accordingly restored the electric supply. However, the respondent No.2, under communication dated 4.5.1996, informed the petitioner to deposit a sum of Rs. 67,640/- latest by 3.6.1996, failing which the supply would be disconnected. The petitioner, therefore, filed Civil Application being No.4645/96 stating that he had already paid Rs. 4,383.7 towards late fee (Nov. Rs.1042.07, Dec. 1540.80 & Jan.96 Rs.1800.20). The say of the petitioner is that the said amount has been wrongly recovered from the petitioner by the respondent and the same should be refunded. He has further stated that he was under the threat of disconnection of power supply, and therefore, as per the advice of the Dy. Engineer, GEB, he had to make a payment of Rs.13,428/- on 5.7.1996 by cheque. He submits that the said amount has been debited to the account of the previous owner, which is not only unfair but against the decision of the Apex Court in the case of Isha Marbles (supra) He has further stated that the wire, poles, transformers, metres, line etc were intact and undisturbed. It was only the connection which was diffused. Thus, the Board is not required to spend anything extra.

3. It is contended by Mr Tushar Mehta, learned Advocate appearing for the Gujarat Electricity Board that the connection to the petitioner will be a fresh connection and as such, the petitioner is liable to pay the necessary charges which is required to be paid for a fresh connection. This aspect has been considered by this Court in the case of M/s.Om Wires Pvt.Ltd. v. The Deputy Engineer, Gujarat Electricity Board, Kalor & Ors., decided on 13.12.1995. This Court, referring to paragraphs 48 to 56 of the judgment of the Supreme Court in the case of Isha Marbles (supra), wherein the Supreme Court had categorically held that though the purchaser asked for electricity connection as a new connection, it cannot be regarded as a new connection. This Court has also rejected the contention of the learned Advocate for the Board that the observations of the Apex Court was only Obiter. This Court held that even if they were Obiter, they are binding on this Court, since they amount to declaration on the point of law.

4. In view of the decision of the Apex Court in Isha Marbles (supra) case and various other decisions of this Court including the case of M/s. Om Wires Pvt. Ltd. (supra), the respondent authority cannot insist on the petitioner that they should pay the outstanding dues of the earlier consumer which was supplying the electricity in the same premises. The respondent Board cannot also consider the electricity supply to the petitioner as a fresh connection.

5. In view of the aforesaid, this Special Civil Application is allowed and the respondents are directed to decide the question of giving reconnection to the petitioner for the electricity supply in the light of the decision in the case of Isha Marbles (supra) without taking into consideration the fact that the dues of the previous consumer were not paid and further that the restoration of the electricity supply to the petitioner is not a reconnection. If any amount which has been charged in excess, the same shall be adjusted in the subsequent or future bills.

Rule is made absolute to the aforesaid extent with no order as to costs.

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